

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 819 of 1996

in

SPECIAL CIVIL APPLICATION No 3317 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE H.L.GOKHALE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MARGABEN VITHALBHAI

Versus

STATE OF GUJARAT

Appearance:

MRS DT SHAH for Petitioners
MR DA BAMBHANIA for Respondent No. 1
SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE H.L.GOKHALE

Date of decision: 09/05/97

ORAL JUDGEMENT

Admitted. Mr.Bambhania appears for the respondents and waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for final hearing to day.

This appeal is directed against an order passed by the learned Single Judge in Special Civil Application No. 3317 of 1996 on June 26, 1996. The learned Single Judge summarily dismissed the petition on the ground that applications ought to have been made under Section 33 C(2) of the Industrial Disputes Act, 1947 ((hereinafter referred to as "the Act"). Applications filed under Section 33-C(1) of the Act were not maintainable at law. Hence, without entering into the merits of the matter, the learned Single Judge dismissed the petition.

Ms.Shah, learned counsel for the appellant contended that the learned Single Judge has committed an error of law in holding that applications filed by the appellant under Section 33 C(1) were not maintainable. She submitted that in Reference No.441 of 1989 and allied cases awards were passed. Since there was non-implementation of the awards, contempt petitions were filed in this Court and the Division Bench passed the following order on 1.9.1992;

"Mr.Panchal, the learned APP appearing for the respondents in the aforesaid matters makes a statement that the impugned award has been challenged by the State Government by filing SCA No.5741/92 to 5744/92 before this High Court which came to be rejected by an order dt. 27.8.1992. Mr.Panchal under the instructions of Mr.M.S.Damor, Under Secretary, R & B Department states that the impugned award shall be complied with within a period of four weeks from to day i.e. on or before 2.10.92. Mr.K.V.Shah Deputy Executive Engineer is directed to deposit the award amount from the date of the award till reinstatement before the Labour Court, Surendranagar within four weeks. In view of the above arrangement, the above matters stated finally disposed of with a liberty to the petitioners to move in case of difficulty. Rule discharged in all the matters."

It was, therefore, submitted that the rights of the appellants were adjudicated by a competent forum and hence, applications under Section 33 C(1) were maintainable.

We see substantial force in the argument of Ms. Shah. In our opinion, in view of award by the tribunal as also in Contempt Petitions, right of the parties were already adjudicated in a competent forum. In these circumstances, it appears to us that the learned Single Judge was not right in holding that applications under Rule 33-C (1) were not maintainable. If applications were maintainable, obviously the appellants (original petitioners) were entitled to get relief in accordance with law.

Our attention was invited by the learned Counsel for the appellant to minimum wages to be paid too the unskilled laborers at the relevant time. For the said purpose notifications which were issued by the Government were placed on record. We are concerned with the date of the award till the date of reinstatement i.e. between July 17, 1991 till October 15, 1992 except appellant no.5 Shantuben. In the case of respondent no.5 Shantuben, the award is dt. October 12, 1991 and she was reinstated on August 14, 1992. Obviously, in view of our findings, the appellants are entitled to minimum wages between the period of award and actual reinstatement. As per notifications minimum wage for the laborers employed in construction work was Rs.13.05 ps. between 1st April 1991 to September 30, 1991 and Rs.14.85 ps. from 1st October 1991 to 31st March 1992. From 1st of April 1992 to 30th September 1992, it was raised to Rs.17.55 ps. and from 1st October 1992 till they were reinstated, it was Rs.19.05 ps. Regarding Basic salary for unskilled laborers, all throughout it was Rs.11.30 ps. The appellants were, therefore, entitled to minimum wages as per the notifications issued by the government.

In the result, the appeal is allowed, and the appellants are held entitled to get minimum wages as per government notifications. The respondents are directed to calculate minimum wages on the above basis and to pay them to the appellants within eight weeks from the receipt of the writ. In the facts and circumstances, there shall be no order as to costs. Liberty to apply in case of difficulty.
